

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 978 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements? YES
 2. To be referred to the Reporter or not? YES :
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement? NO
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder? NO
 5. Whether it is to be circulated to the Civil Judge? : NO
NO

SURYAKANT B PATHAK

Versus

STATE OF GUJARAT

Appearance:

MR SN SOPARKAR for Petitioner

MR SP HASURKAR WITH MRS TALATI, AGP for Respondents

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 11/02/2000

ORAL JUDGEMENT

1. In this petition under Article 226 of the Constitution of India, the short point which has surfaced for consideration and adjudication is, as to whether the rejection of the application of the petitioner by the Tribunal, by its order dated 18/10/1988, in an

Application No.78 of 1987, holding that the wife of the petitioner was a teacher, and not the petitioner and it was, therefore, held by the Tribunal that, the application was without jurisdiction.

2. This decision is questioned in this petition, on the ground that the impugned order is illegal, and the Tribunal was competent to consider and decide the dispute raised before it by the husband of the deceased teacher, in relation to the service benefits in terms of money, due and payable to the deceased wife, who was a teacher.

3. Of course, the definition of teacher in Chapter VII-B of the Bombay Primary Education Act, 1986 would go to show that, a teacher means a teacher of recognized private primary school. The deceased wife - Tarla was a school teacher in the services of respondent. She died, leaving petitioner husband, who applied for the gratuity and other benefits, due and payable to the deceased wife, as the heir and legal representative of the deceased wife. Despite several attempts and requests, the school management and trustees did not respond favourably, and failed to make payment of the benefits to the petitioner - husband. Even the letter was not replied by the respondent - authority.

4. The only contention, which has been canvassed before this Court in this petition under Article 226 and 227 of the Constitution of India, is that the view of the Tribunal that, it had no jurisdiction only on the ground that petitioner - husband of the deceased teacher, was not doing teaching work, is unfounded and illegal.

5. The Bombay Primary Education Act, 1947 [No.LXI of 1947] [hereinafter referred to as 'the Act'] provides to amend the Bombay Primary Education Act, 1947 in section 40[1] Explanation [b] for the purpose of section 40[c] in Chapter VII-B of the Act, defines only who is a teacher, as defined and constituted u/s 40[f] of the Act.

6. In section 40[f], the constitution, the procedure, the parameter and the ambit of the working of the Tribunal, is provided for. It is a settled proposition of law that, in case of any difficulty, or in the event of any suggestibility of two views, or interpretation upon reading of any Statutory Provision, when it is benevolent act, it has to be construed in favour of the subject, and then also for object and to see that it is advanced, and not frustrated. The view which is taken by the Tribunal that the claim of gratuity made by the petitioner, husband of the deceased wife, who

was working as a teacher, at the relevant time, with the respondent school, is interpreted in the manner, as has been done by the Tribunal, in all probabilities, apart from creating hardship to the subject of the objects of the Act, the final design and desideratum and the mechanism evolved under the Act, will be rendered virtually futile, as such an interpretation would run counter to the object, which is sought to be achieved by the establishment of the Tribunal under the Act.

7. In the opinion of this Court, the interpretation should be progressive, pervasive, purposeful, so that it could enhance the object and not frustrate it. Bearing in mind the settled principles of the interpretation of the statutes and the purpose and policy, design and desideratum of the Act, with due respect, the interpretation made by the Tribunal that, it has no jurisdiction, merely because the deceased was a teacher, and the claimant - husband of the deceased teacher, was not a teacher, and therefore, the claim for gratuity due and payable to the deceased teacher wife, is not maintainable, is itself ipso facto, not sustainable. Therefore, such a conclusion recorded by the Tribunal, is required to be quashed and set aside, and the matter is required to be remanded to the Tribunal for determination and decision of the claim made by the petitioner husband.

8. In the result, the petition is allowed to the aforesaid extent. The impugned order is quashed and set aside. The matter is remitted back to the Tribunal to decide the claim made by the petitioner husband of the deceased teacher, as early as possible, and preferably, on or before the end of April 2000. Rule is made absolute to that extent. No orders as to costs.

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